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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(McCook, Maxwell, and Broken Bow, Nebraska)

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MB Docket No. 04-203  
RM-10976

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: May 25, 2005

Released: May 27, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division of the Media Bureau has before it for consideration the *Further Notice of Proposed Rulemaking*<sup>1</sup> proposing changes in the FM Table of Allotments, 47 C.F.R. § 73.202(b). In response to a petition filed by McCook Radio Group, LLC ("MRG"), licensee of Station KRKU(FM), Channel 253C1, McCook, Nebraska, and an Amendment to Petition filed jointly by MRG and Custer County Broadcasting, Inc., licensee of Station KBBN-FM, Broken Bow, Nebraska ("Custer," collectively "Joint Petitioners"), the *Further Notice* proposes to change the community of license for Station KRKU(FM), Channel 253C1, from McCook to Maxwell, Nebraska. The request was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment. In addition, the *Further Notice* proposes a channel substitution and upgrade for Station KBBN-FM at Broken Bow, Nebraska, specifically the substitution of Channel 237C2 for Channel 252C3 at Broken, Bow, Nebraska, at the current transmitter site of Station KBBN-FM, Broken Bow, Nebraska. MRG has committed to reimburse Custer for all reasonable and prudent costs associated with the channel substitution at Broken Bow. Joint Petitioners represent that if their requests are granted, MRG will file an application for Channel 253C1 at Maxwell, Nebraska, and Custer will file an application for Channel 237C2 at Broken Bow, Nebraska, and each will construct the facilities of its respective station if its application is granted.

2. MRG and Custer both filed comments supporting the changes proposed in the *Further Notice*. No other comments were received.

3. In determining whether to approve a change of community, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.<sup>2</sup> Retention of Channel 253C1 at McCook would satisfy only the

<sup>1</sup> 19 FCC Rcd 13,108 (MB 2004). The *Further Notice of Proposed Rulemaking* ("Further Notice") was issued to reflect a requested channel upgrade not reflected in the initial *Notice of Proposed Rulemaking*, 19 FCC Rcd 9,244 (MB 2004).

<sup>2</sup> 90 FCC 2d 88 (1982), *recon. denied*, 56 RR 2d 448 (1983). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal

fourth allotment priority, "other public interest matters," whereas the proposed change of community proposal to Maxwell would satisfy the third allotment priority, "first local service."

4. Maxwell, an incorporated village with a population of 315 persons, is a community for allotment purposes and is deserving of its own local service. The change of community will result in a first local service for Maxwell as well as a net gain of 28,076 persons served by Station KRKU(FM). The change of community would not cause Station KRKU(FM) to place a 70 dBu signal over any portion of any urbanized area, so no *Tuck* analysis is required.<sup>3</sup>

5. For all of the foregoing reasons, we conclude that the public interest would be served by reallocating Channel 253C1 at Maxwell, Nebraska, and by substituting Channel 237C2 for Channel 252C3 at Broken Bow, Nebraska. Channel 253C1 can be allotted at Maxwell in compliance with the minimum distance separation requirements of the Commission's Rules at center city reference coordinates without site restriction: 41-04-44 NL and 100-31-28 WL. Channel 237C2 can be allotted at Broken Bow, Nebraska, with a site restriction of 1.9 km (1.2 miles) east of Broken Bow at the following existing reference coordinates for Station KBBN-FM: 41-23-49 NL and 99-37-02 WL.

6. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. §801(a)(a)(A).

7. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b), 0.283, and 1.420(i), IT IS ORDERED, That effective July 11, 2005, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel Number</u>
Broken Bow, Nebraska	237C2
Maxwell, Nebraska	253C1
McCook, Nebraska	230C2, 241C1, 271C1, 280C2, 287C1

8. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of McCook Radio Group, LLC, for Station KRKU(FM), Channel 253C1, McCook, Nebraska, IS MODIFIED to specify operation on Channel 253C1 at Maxwell, Nebraska, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

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weight is given to priorities (2) and (3).

<sup>3</sup> *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

9. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Custer County Broadcasting, Inc., for Station KBBN-FM, Channel 252C3, Broken Bow, Nebraska, IS MODIFIED to specify operation on Channel 237C2 at Broken Bow, Nebraska, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

10. Pursuant to 47 C.F.R. Section 1.1104(1)(k) and (3)(l), any party seeking a change in community of license of a TV or FM allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, McCook Radio Group, LLC, licensee of Station KRKU(FM), and Custer County Broadcasting, Inc., licensee of Station KBBN-FM, each is required to submit a rule making fee in addition to the fee required for the applications to effectuate the changes specified above.

11. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this Order to the following:

Kevin N. Walsh, Esq.  
Irwin, Campbell & Tannenwald, P.C.  
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(Counsel for Custer County Broadcasting, Inc.)

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Deborah Dupont, Media Bureau, (202) 418-7072.

**FEDERAL COMMUNICATIONS COMMISSION**

**John A. Karousos  
Assistant Chief  
Audio Division  
Media Bureau**